In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 263

OSCAR C. STAHL, AND SYLVIA STAHL, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

This is one of five cases now pending on appeal in the Court of Appeals for the Ninth Circuit involving questions similar to that involved in *Commissioner* v. *Brown*, No. 63, this Term, certiorari granted, June 8, 1964 (377 U.S. 962).[1] On motion of the government and with the acquiescence of all counsel—including counsel for petitioners—further proceedings in those cases in the court of appeals have been suspended to

[1] The others are: *Anderson Dairy, Inc.* v. *Commissioner*, 39 T.C. 1027; *Royal Farms Dairy Co.* v. *Commissioner*, 40 T.C. 172; *Singer* v. *Commissioner*, decided June 7, 1963 (P-H Memo T.C., par. 63,158); *Isis Windows, Inc.* v. *Commissioner*, decided June 27, 1963 (P-H Memo T.C., par. 63,176).

await the final disposition of the *Brown* case. Having consented to the suspension of further proceedings in the court of appeals, and having waited until the petition in the *Brown* case was acted upon, petitioners now petition this Court to review their case prior to judgment in the court of appeals and, presumably, to set it for argument together with the *Brown* case.

Rule 20 of the Rules of this Court provide that a writ of certiorari before judgment "will be granted only upon a showing that the case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this court." The character of the showing that is required is suggested by nature of the handful of cases in which such writs have been granted. See, *e.g.*, *Brown* v. *Board of Education*, 344 U.S. 1 (segregated school systems); *United States* v. *Bankers Trust Co.*, 294 U.S. 240 (gold clause cases); *Youngstown Co.* v. *Sawyer*, 343 U.S. 579 (presidential seizure of steel mills). Petitioners offer no reasons for the taking of such extraordinary action in this case which even approach that standard. That the decision in the *Brown* case may affect the final disposition of this case may be a reason for their seeking leave to file a brief as amici curiae in that case, but it is not a reason for a grant of certiorari before judgment. Petitioners' claim, on the other hand, that the facts of this case are significantly different from those of the *Brown* case simply confirms the desira-

bility of allowing the court of appeals initially to appraise the significance of the differences. The petition for certiorari should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

SEPTEMBER 1964.

U.S. GOVERNMENT PRINTING OFFICE: 1964